

8-2-2017

State v. Evans Respondent's Brief Dckt. 44681

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 44681
Plaintiff-Respondent,)	
)	Bingham County Case No.
v.)	CR-2014-1861
)	
IMA ADELE EVANS,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Evans failed to establish that the district court abused its discretion, either by imposing a unified sentence of seven years, with three years fixed, for possession of methamphetamine, or by relinquishing jurisdiction?

Evans Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Evans pled guilty to possession of methamphetamine and, in December 2014, the district court imposed a unified sentence of seven years, with three years fixed, and retained jurisdiction. (R., pp.114-17.) After a period of retained jurisdiction the district court relinquished jurisdiction in April 2015. (R., pp.128-29.) In January 2016, Evans

filed a petition for post-conviction relief. (Order Granting In Part And Denying In Part Respondent's Motion For Summary Dismissal, p.1, n.1. (Augmentation).) The district court granted relief and entered an amended judgment of conviction to allow Evans to file a notice of appeal. (Order Granting Petitioner's Petition For Post Conviction Relief, pp.1-2. (Augmentation).) The district court also entered a first amended order relinquishing jurisdiction. (R., pp.130-32.) Evans filed a timely notice of appeal. (R., pp.133-35.)

Evans asserts her sentence is excessive in light of her substance abuse issues and "traumatic head injury". (Appellant's brief, pp.4-6.) The record supports the sentences imposed.

When evaluating whether a sentence is excessive, the court considers the entire length of the sentence under an abuse of discretion standard. State v. McIntosh, 160 Idaho 1, 8, 368 P.3d 621, 628 (2016); State v. Stevens, 146 Idaho 139, 148, 191 P.3d 217, 226 (2008). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 687, 391 (2007). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. McIntosh, 160 Idaho at 8, 368 P.3d at 628 (citations omitted). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Id. A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution. Id. "In deference to the trial judge, this Court will not substitute its view of a reasonable sentence where reasonable minds might differ." McIntosh, 160 Idaho at 8,

368 P.3d at 628 (quoting Stevens, 146 Idaho at 148-49, 191 P.3d at 226-27). Furthermore, “[a] sentence fixed within the limits prescribed by the statute will ordinarily not be considered an abuse of discretion by the trial court.” Id. (quoting State v. Nice, 103 Idaho 89, 90, 645 P.2d 323, 324 (1982)).

The maximum prison sentence for possession of methamphetamine is seven years. I.C. § 37-2732(c)(1). The district court imposed a unified sentence of seven years, with three years fixed, which falls well within the statutory guidelines. (R., pp.114-17.) Evans has a long criminal history that includes felony convictions for robbery and failure to register as a violent offender; and misdemeanor convictions for petit theft, DUI, family member assault, and failure to purchase a driver’s license. (PSI, pp.3-6.) Also, while on pretrial release for the instant offense, Evans absconded supervision and was arrested in Utah before being extradited back to Idaho, and was then held in the Bingham County Jail where she was disciplined for fighting and disobeying orders. (PSI, p.6.)

In 2007, Evans violated her parole by absconding and failing to register as a violent offender, after which “she returned to prison for a year.” (PSI, p.6.) Following her incarceration, Evans received an interstate compact to Idaho, and while on parole in Idaho she was convicted of a DUI and a parole violation. (PSI, p.6.) Evans was thereafter “given the opportunity to participate in inpatient treatment but she walked away from treatment and absconded from supervision.” (PSI, p.6.) Evans’ interstate compact was revoked and she returned to Montana, where she was placed on intensive supervision. (PSI, p.6.) Evans’ history of parole violations and criminal conduct is not a direct result of her traumatic head injury, which occurred in February 2013, but appears

instead to be due to her repeated decisions to disregard the law. (PSI, p.38.) At sentencing, the district court set forth its reasons for imposing Evans' sentence, including Evans' issues with supervision, and her unwillingness to fully accept responsibility. (Tr., p.36, L.25 – p.41, L.11.) The state submits Evans has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A.)

“Mindful of the fact that she is currently on parole,” Evans nevertheless next asserts that the district court abused its discretion when it relinquished jurisdiction, rather than grant her probation, in light of her traumatic brain injury. (Appellant's brief, pp.1, 7-8.) The issue Evans raises is moot because, as Evans acknowledges, she is already on parole.

“An issue becomes moot if it does not present a real and substantial controversy that is capable of being concluded by judicial relief.” State v. Barclay, 149 Idaho 6, 8, 232 P.3d 327, 329 (2010) (quotations and citations omitted). Although the district court relinquished jurisdiction, and Evans was incarcerated, she has since been paroled. (Memorandum from the State of Idaho Commission of Pardons and Parole, p.1. (Augmentation).) Thus, even if this Court were to determine that the district court erred by relinquishing jurisdiction, such a determination would have no practical effect upon the outcome of the case because Evans is no longer incarcerated. Evans' claim is, therefore, moot and this Court must decline to consider it.

Even if this Court considers Evans' claim that the district court abused its discretion when it relinquished jurisdiction, the claim fails. Evans' actions while on her

rider, even if not the product of a “voluntary behavioral problem” (Appellant’s brief, p.8), show that she was not amenable to probation. Rider staff succinctly summarized Evans’ performance during her brief stint in the retained jurisdiction program, as follows:

Ms. Evans was briefly in TC beginning in January 2015. Approximately two (2) weeks into programming, she violated a cardinal rule of the TC by threatening violence on another offender. She was served with a DOR and was sent on a 30 day reflection period prior to being allowed to reenter the TC. Upon returning to TC, Ms. Evans was only involved in programming for a weekend before she was involved in another confrontation with an orientation phase offender. While this was determined not to be a cardinal rule violation, Ms. Evans stated she was not willing to talk to staff about her involvement and would instead sign a refusal to program. Despite staff efforts to explain the repercussions of that decision, Ms. Evans did sign refusal papers and was removed from the TC.

(APSI, p.6.)

Even assuming Evans’ inability or unwillingness to follow the rules of the rider program was due in part to her mental limitations, such does not show the district court abused its discretion in relinquishing jurisdiction. If Evans could not comply with the rules in the “structured” environment of a rider, there is very little reason to believe she could comply with requirements of a supervised probation. This is especially true given Evans’ past history of pretrial release and parole violations, discussed supra. Given Evans’ abysmal performance in the TC program, the district court did not abuse its discretion when it relinquished jurisdiction.

Conclusion

The state respectfully requests this Court to affirm Evans' conviction and sentence and dismiss Evans' appeal from the district court's order relinquishing jurisdiction because the issue she raises is moot.

DATED this 2nd day of August, 2017.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

ALICIA HYMAS
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 2nd day of August, 2017, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

ANDREA W. REYNOLDS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ Lori A. Fleming
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

<p style="text-align: center;">36</p> <p>1 THE COURT: Yeah. The other thing I need to 2 clarify: As I indicated, she has been denied Wood and 3 Drug Court, but she was also denied Mental Health Court. 4 Their reasoning was that she did not meet criteria. 5 Ms. Evans, do you wish to make a statement on 6 your own behalf? 7 THE DEFENDANT: No, Your Honor. 8 THE COURT: Go ahead and move that back over and 9 hopefully we're... 10 And are you fully satisfied with the 11 representation Mr. Ricks has provided? 12 THE DEFENDANT: Yes, Your Honor. 13 THE COURT: Do you know of -- I've asked you once 14 before; I'll ask you again, though. Do you know of any 15 legal reason why I should not sentence you today? 16 THE DEFENDANT: No, Your Honor. 17 THE COURT: Mr. Ricks, do you? 18 MR. RICKS: I do not. 19 THE COURT: Mr. Hendricks, do you? 20 MR. HENDRICKS: No, Your Honor. 21 THE COURT: Ms. Evans, based on your plea of 22 guilty, it is the judgment of the Court that you are 23 guilty of possession of a controlled substance 24 (methamphetamine). 25 I've carefully gone through your record as set</p>	<p style="text-align: center;">37</p> <p>1 forth in the presentence report. I've also gone through 2 the rest of the information contained within that 3 report. The presentence report itself recommends 4 probation with a specialty court, but if you're not 5 accepted into a specialty court, they're recommending 6 retained jurisdiction. 7 As indicated, this is your third felony 8 conviction. You're still relatively young. You're 9 29 years of age. But you do have a high LSI score of 10 44. 11 The mental health assessment indicates that 12 there is mood disorder, generalized anxiety disorder. 13 You've reported bipolar and PTSD. They've simply 14 recommended that you continue with counseling to treat 15 your past diagnoses and that you participate in 16 substance abuse treatment as well. And that evaluation 17 indicated that you're in need of level 2.1 treatment. 18 When I sentence an individual, I have to 19 consider protection of society, deterrence, 20 rehabilitation, and punishment. I also have to consider 21 those factors under Idaho Code 19-2521 relative to the 22 question of whether I should place you on probation or 23 confine you to prison. 24 There's a couple of things that I want to 25 point out that -- the State in this case has recommended</p>
<p style="text-align: center;">38</p> <p>1 probation. Your attorney has requested probation. The 2 State has concurred in the basis of the probation or the 3 reasons for the probation, as outlined by Mr. Ricks, 4 basically. 5 First of all, mental health issues are 6 different than neurocognitive disabilities. There's two 7 different issues going on there. And so Mr. Ricks and 8 Mr. Hendricks are correct, that the presentence report 9 doesn't really delve into that, but I don't know that 10 they had to delve into it, other than your reports and 11 maybe what was going on in the jail. 12 But both those matters can be dealt with not 13 only on a probation level, but they can be dealt with on 14 a retained or an imprisonment setting. Obviously, 15 there's one that's more preferable than the other. 16 The question is how does that play into the 17 balance of everything? 18 Part of the concern that I have, though, with 19 the recommendations that are being made is that 20 Mr. Hendricks and your attorney, to kind of put it in my 21 own words and paraphrase it, is that they've -- they're 22 arguing that probation is better because you can 23 function with the brain injury better in a community 24 setting but at the same time -- and that by putting you 25 in a retained jurisdiction we're setting you up to fail.</p>	<p style="text-align: center;">39</p> <p>1 I question that argument because, in the short 2 period that you've been before this Court, you've had 3 other issues. You absconded from the pretrial release. 4 We had to find you in Utah. And once you found out 5 about the warrant, you at least turned yourself in. And 6 so there's questions on whether even probation would 7 work when you can't follow the basic rules of reporting 8 as directed and leaving without authorization as well. 9 Based upon my review and applying those 10 factors that I'm required to, it is the judgment of this 11 Court that you be sentenced to the Idaho Department of 12 Corrections for a fixed and determinate period of 13 three years and an indeterminate period of four years -- 14 in other words, not less than three, no more than seven. 15 You're fined the amount of \$1,000. 16 Court costs are \$280.50. 17 You will reimburse the county for the services 18 of the public defender in the amount of \$500. 19 You've agreed to pay restitution in the amount 20 of \$100, and that's hereby ordered as well. 21 The Court, in this case, is going to retain 22 jurisdiction for a period of up to 365 days. I'm going 23 to order that you be considered for the CAPP and the TC 24 program, but the Department will make that 25 determination, once you get there, on which program is</p>

<p style="text-align: center;">40</p> <p>1 most appropriate.</p> <p>2 If you get over to the TC -- or to the rider</p> <p>3 program and get involved and you do well in those</p> <p>4 programs and you don't have any significant problems,</p> <p>5 then this Court will bring you back and place you on</p> <p>6 probation.</p> <p>7 If you go over there and mess it up, though, I</p> <p>8 will get a report that will recommend that I relinquish</p> <p>9 jurisdiction, and I will follow that recommendation and</p> <p>10 will do so without a hearing.</p> <p>11 So I know you've got some challenges, but</p> <p>12 you're going to have to deal with those challenges. The</p> <p>13 rider program will be aware of those issues and will</p> <p>14 have the ability to explore them even more. But it's</p> <p>15 within your situation -- or within your realm to do</p> <p>16 that.</p> <p>17 One of things, too, that gives me some pause</p> <p>18 about the recommendations that were made and why I went</p> <p>19 with the recommendation of -- or with retained</p> <p>20 jurisdiction, too, is there is some concern about your</p> <p>21 willingness to take responsibility for the actual things</p> <p>22 that happened here, because you report to the</p> <p>23 presentence investigator, even though you pled guilty</p> <p>24 and told me what happened, that you took responsibility</p> <p>25 for somebody else's stuff, which I question whether</p>	<p style="text-align: center;">41</p> <p>1 that's accurate or not.</p> <p>2 And so those are some issues, too, that</p> <p>3 concern me and one of the reasons I have opted for the</p> <p>4 retained jurisdiction.</p> <p>5 Quite frankly, when I came in here, I was more</p> <p>6 inclined to simply impose a sentence today, but given</p> <p>7 the information that's been provided to me and the</p> <p>8 arguments of your attorney, with the State outlining its</p> <p>9 basis for the recommendation as well, I've decided to do</p> <p>10 the retained jurisdiction, although I haven't agreed to</p> <p>11 do what they've asked me to do here today.</p> <p>12 Do you understand the sentence and what I've</p> <p>13 done here today?</p> <p>14 (A discussion was held off the record between</p> <p>15 the defendant and their attorney.)</p> <p>16 MR. RICKS: Your Honor, may I be heard briefly?</p> <p>17 THE COURT: You may.</p> <p>18 MR. RICKS: In speaking with Ms. Evans, she has</p> <p>19 requested that I ask the Court to just impose her time.</p> <p>20 I have talked to her about asking -- to let me come down</p> <p>21 and talk to her about this and figure out what's going</p> <p>22 on and reason things out, and she has indicated to me</p> <p>23 that she does not want to do that. She wants me to</p> <p>24 request that Court just impose the time.</p> <p>25 THE COURT: Well, I guess I'm not surprised, but</p>
<p style="text-align: center;">42</p> <p>1 I'm going to give you time to think about it. You're</p> <p>2 still going to go do the retained jurisdiction.</p> <p>3 So I'm denying the request at this point.</p> <p>4 (A discussion was held off the record between</p> <p>5 the defendant and their attorney.)</p> <p>6 THE COURT: Because if I do that, ma'am, quite</p> <p>7 frankly, is what I'm going to do is I'm going to change</p> <p>8 the sentence to four years fixed and three years</p> <p>9 indeterminate.</p> <p>10 THE DEFENDANT: I don't even know that that means.</p> <p>11 I'd just rather do my time.</p> <p>12 THE COURT: It means you'll do four years,</p> <p>13 ma'am --</p> <p>14 THE DEFENDANT: That's --</p> <p>15 THE COURT: -- before you're eligible for parole,</p> <p>16 as opposed to three years.</p> <p>17 THE DEFENDANT: That's fine. I'm willing -- I was</p> <p>18 willing to do the seven years before. That's why I</p> <p>19 told -- I didn't want to do the specialty -- is because</p> <p>20 I wanted to fight it, because it wasn't my -- I wanted</p> <p>21 to hire my own --</p> <p>22 THE COURT: You pled guilty, ma'am.</p> <p>23 THE DEFENDANT: -- my own lawyer. And so I'm</p> <p>24 willing just to do my time and just -- I don't want to</p> <p>25 waste the Court's time anymore. I just wanted to get</p>	<p style="text-align: center;">43</p> <p>1 sentenced and just know what I'm doing -- and just get</p> <p>2 sentenced.</p> <p>3 THE COURT: Well, right now --</p> <p>4 THE DEFENDANT: I'll do the whole seven years.</p> <p>5 THE COURT: Okay. So you want to go do</p> <p>6 seven years fixed?</p> <p>7 THE DEFENDANT: I don't know what that means, but</p> <p>8 I would rather just --</p> <p>9 THE COURT: That means you would do the</p> <p>10 seven years without parole.</p> <p>11 MR. RICKS: And, Your Honor, I --</p> <p>12 THE COURT: Hang on.</p> <p>13 Is that what you want to do: seven years</p> <p>14 without parole?</p> <p>15 THE DEFENDANT: I think that was if I went to</p> <p>16 trial and lost. I know it was seven years.</p> <p>17 THE COURT: No, it's not whether you go to trial</p> <p>18 or lost. I've got that option, no matter what.</p> <p>19 But what you're telling me is you just want to</p> <p>20 go do your seven years. If you want to do that, I can</p> <p>21 impose seven years fixed and leave it at that. You'll</p> <p>22 go do your time and not be eligible for parole, period.</p> <p>23 THE DEFENDANT: I would rather just do my time</p> <p>24 because I --</p> <p>25 THE COURT: You want to do seven years rather than</p>

<p style="text-align: center;">44</p> <p>1 going on a retained jurisdiction?</p> <p>2 THE DEFENDANT: (Defendant nodded head.)</p> <p>3 THE COURT: Well, I'm going to leave my sentence</p> <p>4 where it is. We'll see what happens.</p> <p>5 MR. RICKS: Thank you, Your Honor.</p> <p>6 THE COURT: Now, ma'am, you have the right to</p> <p>7 appeal this decision. That appeal has to be filed</p> <p>8 within 42 days. You have the right to be represented by</p> <p>9 counsel on that appeal. If you cannot afford counsel,</p> <p>10 you can apply to this Court to have counsel appointed to</p> <p>11 represent you at public expense. Just remember you only</p> <p>12 have 42 days in which to file that appeal.</p> <p>13 Do you understand that right?</p> <p>14 THE DEFENDANT: Yes, Your Honor.</p> <p>15 THE COURT: You also have the right to seek relief</p> <p>16 under Idaho Criminal Rule 35. If you desire to pursue</p> <p>17 that remedy, that has to be filed within 120 days of</p> <p>18 entry of the judgment.</p> <p>19 Do you understand that?</p> <p>20 THE DEFENDANT: Yes, Your Honor.</p> <p>21 THE COURT: You also have the right to seek relief</p> <p>22 under the Idaho Uniform Post-Conviction Relief Act. If</p> <p>23 you seek that alternative, that has to be filed within</p> <p>24 one year from the date your appellate time expires.</p> <p>25 Do you understand that?</p>	<p style="text-align: center;">45</p> <p>1 THE DEFENDANT: Yes, Your Honor.</p> <p>2 THE COURT: All right. If you have any questions</p> <p>3 about how or whether to pursue any of those remedies,</p> <p>4 make sure you discuss those matters with Mr. Ricks, and</p> <p>5 he can advise you.</p> <p>6 At this point, then, you're remanded to the</p> <p>7 custody of the Bingham County Sheriff's Office to be</p> <p>8 transported to the proper agent and authority for</p> <p>9 purposes of the retained jurisdiction program.</p> <p>10 (The hearing concluded at 11:22 A.M.)</p> <p>11 -oo0oo-</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: center;">46</p> <p>1 BLACKFOOT, IDAHO</p> <p>2 MONDAY, APRIL 6, 2015, 8:46 A.M.</p> <p>3</p> <p>4 THE COURT: We will be on the record in Bingham</p> <p>5 County Case CR-2014-1861, State of Idaho versus</p> <p>6 Ima Evans. The Court notes the defendant is present</p> <p>7 with her attorney, Mr. Jared Ricks. The State of Idaho</p> <p>8 is present, represented by Deputy Prosecuting Attorney</p> <p>9 Jeremy Garner.</p> <p>10 We are set for a review hearing on the</p> <p>11 defendant's performance on the retained jurisdiction.</p> <p>12 That APSI was filed on March 20th. Copies were</p> <p>13 furnished to the attorneys. And the State had no</p> <p>14 objection to the Court relinquishing jurisdiction.</p> <p>15 Mr. Ricks requested a hearing, and so this matter was</p> <p>16 set.</p> <p>17 The Court has received today -- well, filed on</p> <p>18 April 3rd, a stipulation to continue so that the</p> <p>19 defendant's application for Wood Court could be</p> <p>20 processed.</p> <p>21 Mr. Ricks?</p> <p>22 MR. RICKS: Your Honor, the Court has correctly</p> <p>23 recited where we're at. Upon her return from her</p> <p>24 rider -- I know that Ms. Evans had talked some at</p> <p>25 sentencing in a desire to have the Court impose the</p>	<p style="text-align: center;">47</p> <p>1 sentence. The Court did retain jurisdiction there</p> <p>2 still.</p> <p>3 I met with her upon her return. We're not</p> <p>4 really disputing that the program was not completed or</p> <p>5 the reasons for which it was not completed. But in</p> <p>6 speaking with Ms. Evans, she had wanted to submit an</p> <p>7 application for participation in the Wood Pilot Program</p> <p>8 or Wood Court. We had submitted one previously, but</p> <p>9 given the situation and the consequences, I just wanted</p> <p>10 to request a continuance for that to be considered.</p> <p>11 THE COURT: Has the application been submitted?</p> <p>12 MR. RICKS: I was informed by Ms. Evans that it</p> <p>13 was --</p> <p>14 THE COURT: All right.</p> <p>15 MR. RICKS: -- that she already submitted it.</p> <p>16 THE COURT: Well, the motion to continue is</p> <p>17 denied.</p> <p>18 Are you ready to proceed?</p> <p>19 MR. RICKS: We can proceed, Your Honor. I will</p> <p>20 indicate for the Court that primarily the desire to have</p> <p>21 that resolved was the main reason for requesting the</p> <p>22 hearing. I -- we're not presenting other argument.</p> <p>23 THE COURT: All right. Well, I'll hear any</p> <p>24 argument you have at this point.</p> <p>25 MR. RICKS: Your Honor, I guess what I would --</p>